

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

THE CITY OF HUNTINGTON,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG  
CORPORATION, *et al.*

Defendants.

Civil Action No. 3:17-01362

---

CABELL COUNTY COMMISSION,

Plaintiff,

v.

AMERISOURCEBERGEN DRUG  
CORPORATION, *et al.*

Defendants.

Civil Action No. 3:17-01665

**NOTICE OF SUPPLEMENTAL AUTHORITY RELATED TO DEFENDANTS'  
MOTION TO EXCLUDE THE RULE 30(b)(6) DEPOSITION  
TESTIMONY OF THOMAS PREVOZNIK**

On May 2, 2021, Defendants filed a Motion to Exclude the Rule 30(b)(6) Deposition Testimony of Thomas Prevoznik (“Motion”) based on Mr. Prevoznik’s lack of personal knowledge. ECF No. 1310. Defendants stated that the MDL Court did not address the subject of the Motion. Plaintiffs did not say otherwise in their opposition. While reviewing the MDL order on motions in limine for another purpose, however, Defendants were reminded that they did raise this issue in the Track One MDL litigation. *See In re Nat'l Prescription Opiate Litigation*, MDL

No. 2804, ECF No. 2666 at 7 (N.D. Ohio 2019).<sup>1</sup> Pursuant to the Court’s directive to indicate whether a motion raises an issue previously raised to the MDL court, Defendants hereby notify the Court of Judge Polster’s ruling on that issue. *Id.* at 34.

Judge Polster denied Defendants’ motion without prejudice, stating that he would not “make a blanket ruling on the issue and instead w[ould] address matters at trial in context, as they arise.” *Id.* Judge Polster further noted that “the normal hearsay rules apply to a corporate representative’s testimony at trial, *i.e.*, unless the information falls within one of the authorized exceptions to the hearsay rule, a Rule 30(b)(6) witness may not testify to matters outside his or her personal knowledge.” *Id.* at 34 n.65. Unlike in the MDL, the parties here have already submitted specific designations of Mr. Prevoznik’s deposition testimony to the Court, so that the Court can properly consider whether the designated testimony is based on Mr. Prevoznik’s personal knowledge.

---

<sup>1</sup> Defendants have appended Judge Polster’s order opinion to multiple other filings in this case. *See, e.g.*, ECF No. 1331-2.

Dated: May 26, 2021

Respectfully Submitted,

**AmerisourceBergen Drug Corporation**

By Counsel:

/s/ Gretchen M. Callas

Gretchen M. Callas (WVSB #7136)

JACKSON KELLY PLLC

Post Office Box 553

Charleston, West Virginia 25322

Tel: (304) 340-1000

Fax: (304) 340-1050

gcallas@jacksonkelly.com

/s/ Robert A. Nicholas

Robert A. Nicholas

Shannon E. McClure

Joseph J. Mahady

REED SMITH LLP

Three Logan Square

1717 Arch Street, Suite 3100

Philadelphia, PA 19103

Tel: (215) 851-8100

Fax: (215) 851-1420

rnickolas@reedsmith.com

smcclure@reedsmith.com

jmahady@reedsmith.com

***McKesson Corporation***

By Counsel:

/s/ Jeffrey M. Wakefield

Jeffrey M. Wakefield (WVSB #3894)  
jwakefield@flahertylegal.com  
Jason L. Holliday (WVSB #12749)  
jholliday@flahertylegal.com  
FLAHERTY SENSABAUGH BONASSO PLLC  
P.O. Box. 3843  
Charleston, WV 25338-3843  
Telephone: (304) 345-0200

/s/ Timothy C. Hester

Timothy C. Hester  
Laura Flahive Wu  
Andrew P. Stanner  
COVINGTON & BURLING LLP  
One CityCenter  
850 Tenth Street NW  
Washington, DC 20001  
Tel: (202) 662-5324  
theser@cov.com  
lflahivewu@cov.com  
astanner@cov.com

/s/ Paul W. Schmidt

Paul W. Schmidt  
COVINGTON & BURLING LLP  
The New York Times Building  
620 Eighth Avenue  
New York, New York 10018  
Tel: (212) 841-1000  
pschmidt@cov.com

***Cardinal Health, Inc.***

By Counsel:

/s/ Enu Mainigi

Enu Mainigi  
F. Lane Heard III  
Ashley W. Hardin  
Jennifer G. Wicht  
WILLIAMS & CONNOLLY LLP  
725 Twelfth Street NW  
Washington, DC 20005  
Telephone: (202) 434-5000  
Facsimile: (202) 434-5029  
emainigi@wc.com  
lheard@wc.com  
ahardin@wc.com  
jwicht@wc.com

Michael W. Carey (WVSB #635)  
Steven R. Ruby (WVSB #10752)  
Raymond S. Franks II (WVSB #6523)  
David R. Pogue (WVSB #10806)  
CAREY DOUGLAS KESSLER & RUBY PLLC  
901 Chase Tower, 707 Virginia Street, East  
P.O. Box 913  
Charleston, WV 25323  
Telephone: (304) 345-1234  
Facsimile: (304) 342-1105  
mwcarey@csdlawfirm.com  
sruby@cdkrlaw.com  
rfranks@cdkrlaw.com  
drpogue@cdkrlaw.com

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on this 26<sup>th</sup> day of May, 2021, the foregoing Memorandum was served using the Court's CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ *Gretchen M. Callas*